

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

HORATIO OCHOA,

Plaintiff,

vs.

Civ. No. 08-931 RLP

**MICHAEL J. ASTRUE, Commissioner,
Social Security Administration,**

Defendant.

**MEMORANDUM OPINION and ORDER AWARDING FEES
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER comes before the Court on Plaintiff's Motion for an award of attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) in the amount of Four Thousand Five Hundred Ninety and 55/100 Dollars (\$4,590.55) [Docket No. 27]. In his Response, Defendant states that he has no objection to the amount of fees as requested, but requests that the award be payable to Plaintiff as prevailing party. [Docket No. 28].

The plain language 28 U.S.C. § 2412(d)(1)(A) states, the "court shall award to a prevailing party ... fees and other expenses." The Tenth Circuit has previously found that "an EAJA award is to the claimant." McGraw v. Barnhart, 450 F.3d 493, 497-498 (10th Cir.2006).

The court **FINDS**:

- (1) That Plaintiff's Request for Fees under the Equal Access to Justice Act is reasonable,
and
- (2) The proper payee for fees awarded under the Equal Access to Justice Act is Plaintiff.

IT IS THEREFORE ORDERED that Plaintiff's Motion for attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), in the amount of Four Thousand Five Hundred Ninety and 55/100 Dollars (\$4,590.55) is granted.

IT IS FURTHER ORDERED that the Commissioner shall make such fees payable to Plaintiff, but shall remit said fees to Plaintiff by sending payment in care of the offices of his attorney, The Martone Law Firm.

IT IS FURTHER ORDERED that in the event of a subsequent award of fees pursuant to 42 U.S.C. §406(b), the refund provision of Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986) will apply.



RICHARD L. PUGLISI
UNITED STATES MAGISTRATE JUDGE